

# Indiana Board of Special Education Appeals



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## BEFORE THE INDIANA BOARD OF SPECIAL EDUCATION APPEALS

**In the Matter of C.T., and the  
Evansville-Vanderburgh  
School Corporation.**

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**ART. 7 HEARING NO. HR-055-2009**

**Appeal from the Decision of:  
Kristin L. Anderson, Esq.  
Independent Hearing Officer**

**Status: Closed to Public**

## COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Procedural History<sup>1</sup>

On March 2, 2009, the Indiana Department of Education Office of Legal Affairs received a request for a due process hearing alleging that the Evansville-Vanderburgh School Corporation ("School") failed to devise an appropriate Individual Educational Plan ("IEP") that included among other things a transition plan, preparation for independent living, preparation for employment, post-secondary education, integration into the workplace and social skills. As the student C.T. turned eighteen years of age in December 2008, the parents presented a copy of the court papers appointing the parents as the student's legal guardians ("Student"). The School mailed its response to the Student's request for hearing on March 9, 2009 however, the forwarding address for Student's attorney had expired and the response was never received. At hearing, the Student's request for a default was denied. The IHO determined that as the parties participated in mediation there was no prejudice to the Student and therefore, the Student was not entitled to a default based on the attorney's difficulties with postal service.

On March 2, 2009, the Superintendent of Public Instruction appointed the Independent Hearing Officer ("IHO"). A pre-hearing teleconference was held on April 3, 2009 and a hearing was set for June 8-12, 2009 and the Student requested that the hearing be made open to the public. The parties agreed to a deadline for the exchange of documents and witness lists on May 30, 2009 and an extended hearing decision date of July 6, 2009.

On May 8, 2009, the School filed a motion to end the School's obligation to provide services to the Student once his high school diploma was conferred. A teleconference was held

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<sup>1</sup> The Procedural History is taken substantially from the Independent Hearing Officer's final written decision. Neither party objected to the IHO's recitation of the procedural history. Corrections and additions have been made where warranted.

on May 28, 2009 on the School's motion. The IHO ordered that the School continue to provide services to the Student *pendente lite* until a Vocational Rehabilitation Services assessment could be conducted. Following the teleconference, the IHO was advised that a Vocational Rehabilitation Services assessment could not be conducted prior to the hearing. The School objected to the suggestion by Student's counsel to continue the hearing. The IHO ordered that the hearing dates would remain unchanged since the hearing documents included a vocational assessment which was obtained by the parents.

On June 8, 2009, the hearing convened. The Student's attorney objected to the admission of the School's documents into evidence as the Student did not receive the documents until June 1, 2009. The School explained that due to mail delivery difficulties with the Student's attorney's office delivery was later than intended. The School also stated that many documents were exchanged prior to the deadline for the exchange of documents and this fact was not disputed by Student's attorney and there was no show of prejudice or surprise by the Student's attorney. The IHO admitted the School's documents on June 9, 2009 over objection by the Student.

During the hearing, the Student presented testimony about the Indiana Department of Education's ("IDOE") policies regarding "seat time" requirements for earning a diploma and the requirements for waivers of "seat time" requirements in alternative settings. No document was in evidence that addressed whether the "seat time" requirements were intended to be retroactively applied. When the School stated its intention to bring a witness from IDOE to rebut the Student's evidence regarding the "seat time" requirements the Student objected. The Student's objection was overruled as the Student failed to disclose prior to the hearing his contention that Holy Cross lacked the legal authority to issue a diploma to the Student. A witness from IDOE's Office School was not available prior to the close of the hearing. Telephonic testimony was scheduled for June 16, 2009 over the Student's objection.

On June 15, 2009, the Student faxed several pages of the Behavior Therapy file for the Student available at the hearing but not admitted into evidence. A request was made by the Student to have these pages admitted into the record. The School objected and asked in the alternative that the entire Behavior Therapy file be admitted if any of the record was admitted. The entire Behavior Therapy record for the Student was admitted over objection by the Student on July 3, 2009.

### **Issues Presented**

- I. Whether the School provided the Student with a free and appropriate education by providing:
  - a. Individualized education programs that adequately addressed the Student's needs in the areas of communication, social skills and sensory processing; and
  - b. Appropriate transition planning in the areas of post-secondary education, employment readiness and Independent living.

## **Findings of Fact**

*The findings of fact set out in this decision have been made after considering all written evidence, audio tapes, video depositions, and oral testimony available. The evidence has been interpreted to reconcile differences whenever possible and reasonable to do so. Any references to specific testimony, the transcript, or documentary evidence is for illustrative purposes only. Materials referenced may not be the sole basis for any particular finding of fact.*

*Findings of Facts stated under a particular heading or issue may be relevant to other issues. The omission of a particular finding under a particular heading or issue does not mean that that fact was not considered in arriving at the conclusions of law.*

*To the extent that any material included in a Finding of Fact might more properly be categorized as a conclusion of law, it shall be considered a conclusion of law. To the extent that any material included in a Conclusion of Law necessitates a finding of fact, that additional finding of fact shall be made.*

### ***Facts relevant to the student's educational needs and services prior to residential placement:***

1. The student qualified for special education based on his learning disability of written expression and emotional handicap. At all relevant times, the student's individualized education programs have recognized that he has the following additional health problems: Attention Deficit-Hyperactivity Disorder, Anxiety Disorder – Not Otherwise Specified, sensory processing disorder, migraines, asthma, GI reflux, foot pain and food allergies. The student's individualized education programs have also indicated that the student was receiving a number of medications for these mental and physical conditions.
2. The student's individualized education program from November 2006 added the additional diagnosis of Pervasive Developmental Disability – Not Otherwise Specified (PDD-NOS). His IEP from November 2007 added an additional psychiatric diagnosis of Bi-Polar Disorder - Not Otherwise Specified. This IEP noted a different regimen of psychiatric medications than the student's prior IEP.
3. The parents, themselves both physicians,<sup>2</sup> have attempted numerous medical, psychological, and behavioral interventions in attempts to improve the student's mental and emotional functioning to a point where the student could function more successfully at home, at school, and in the community. The student's difficulties presented mainly in the home or other situations controlled by the parents, however.
4. The parents have reported that since childhood, access to technology has been the only effective "carrot or stick" for motivating the student. When the student was on homebound, the parents were the only parties having access to motivators to help the student with his educational and psychological issues.
5. In March 2007, the parents sought an update to the student's prior psychiatric and psychological evaluations at Children's Resource Group. Dr. Adinamis clarified that the

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<sup>2</sup> The student's mother completed her residency in child and adolescent psychiatry.

student did not meet criteria for Aspergers Disorder,<sup>3</sup> stating that the presence of early language delays diagnostically necessitated a diagnosis of PDD-NOS. She noted that therapeutic interventions for Aspergers and PDD-NOS would be similar.

6. Psychiatric and psychological clinicians suggested a number of school-based strategies for dealing with the student's behavioral and sensory difficulties. The student's IEPs contained numerous adaptations, modifications and personnel supports to reduce anxiety and stress, and difficulties in written output. There is no evidence that the parents requested, or that the student needed, other adaptations, modifications, or supports.
7. A list of these highly individualized general education considerations are set out in Appendix A to this decision. The mother testified that these considerations were implemented when relevant circumstances arose.
8. Because of the student's psychiatric illnesses, i.e., the increasing anxiety and mood dysregulation, the parties agreed to place the student on partial homebound with the opportunity to attend certain classes with his peers. **It is notable that when the student actually attended school during the relevant period, he did very well and there is no evidence that the agreed upon adaptations, modifications, and supports were inadequate.**
9. The mother e-mailed the student's homebound teacher in February 2007 indicating that she had been applying pressure to the student in an effort to get him to attend class and to do school work. She disclosed that the student's doctor had recommended in-patient treatment for the purpose of trying to better regulate the student's anxiety and mood, but that she was not ready to go that route. She believed it would be best just to "cut him more slack and not push his school work lest [she] precipitate imminent danger in the process." The mother thanked the homebound teacher for her continued patience and support.
10. The parties agreed that the student would receive two hours homebound instruction per day. The student's anxiety increasingly affected his ability and/or willingness to participate in much more than 90 minutes of instruction per week. There was no evidence to support a finding that the homebound teacher lacked any skill or training that could have made the student's homebound experience more successful. The mother, in fact, e-mailed the teacher, commending her for her [the teacher's] "heroic efforts."
11. The student's Teacher of Record from May 2006 until November 2007 was a trained member of Respondents' Autism Management Team. When the student was able to attend school, he spent his Resource period with this TOR for the 2006-2007 school year. The student's mood dysregulation and anxiety, and his inability or unwillingness to cooperate with his parents and school personnel even in his own home, effectively tied the school's hand from exploring the student's more subtle needs related to his diagnosis of PDD-NOS, however.

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<sup>3</sup> Respondents performed an Asperger's checklist for the student in March 2004 which indicated that it was "highly unlikely" that the student had Asperger's Syndrome.

12. During the time relevant to his hearing the student received the vast majority of his instruction at home with the mother present. There was nothing of significance in the record to reflect that the school withheld any information regarding the student's performance.
13. The parents had the assistance of an advocate at all times relevant to this hearing and signed permission for each of the student's individualized education programs until February 2009.
14. There is nothing in the record to suggest that the student's IEP documents had any significant flaws which hindered the student from receiving the benefit of the services set out therein.

***Facts relevant to the student's residential placement:***

15. The parents had the student evaluated by two professionals in the spring of 2007 to advise them whether a residential placement would be appropriate for the student. The professionals agreed that the student's instability of mood was affecting his thought processes. Both professionals advised the parents to explore modifying the student's medications to try to stabilize his mood and anxiety to a point where he could be educated in a more normal setting. The doctors advised the parents that it would take some time before there might be substantial improvement in the student's affect.
16. In May 2007, the mother spoke with the TOR (Chapman) and expressed her desire for input from Gibault if the student's ability to leave the house did not improve. Chapman agreed that a Gibault placement should be explored and told parents Mrs. Woebkenberg would be looking into Gibault's program. Mr. Hassman suggested that the student consider attending Evansville Day School May 2007. The mother agreed to visit the day school with student. The parties agreed to further explore placement at Gibault in the fall, if the student's new medication regimen was not successful.
17. In the fall of 2007, the student initially showed some progress at Respondents' tech center, and an annual case conference was set for November 13, 2007. By that date, the student's attendance at the tech center had become sporadic.
18. By December 2007, it became apparent to Dr. Adinimas that medical interventions suggested in May were not making a significant improvement in the student's functioning. She wrote a recommendation for residential placement that was discussed at a case conference committee meeting in late January 2008.
19. The IEP of January 31, 2008 indicated that the parties were in agreement to explore community-based services.
20. Mother's letter to director of special education dated February 26, 2008 and an e-mail of April 6, 2008 indicated that she would have preferred to keep her child at home, but it was not realistic to expect this to address the complexity of his problems.

21. The parents visited Gibault on April 6, 2008. Gibault did home visit in late April 2008 and accepted the student.
22. Respondents and parents met for a case conference committee in late April 2008 to write an IEP appropriate for implementation at Gibault. The parents requested certain changes, which were made by Respondents' Director of Special Education. The parents found it to be very professional and impressive, and signed the application on May 1, 2008. The application was sent to the Indiana Department of Education (IDOE) on or about May 2, 2008 and was received by IDOE on May 5, 2009.
23. IDOE approved the student's application for residential services on May 23, 2008. The service dates were agreed to be June 4, 2008 through April 10, 2009. The student was not placed immediately upon approval because Gibault had to make sure appropriate staff was available for the student.
24. Respondents applied to extend funding for the contract with Gibault. The IDOE agreed to extend funding through May 21, 2009.
25. At hearing, the student's mother testified that it took her a year to get the student to agree that a residential placement was in his best interests. The student was in agreement with a Gibault placement after he visited its campus in April 2009.<sup>4</sup>
26. The mother's testimony, and the student's psychological history, indicate that the student has an entrenched pattern of being uncooperative and resistant when he is forced to do things against his will. It is fair to conclude that the student would not have had the willingness and motivation to cooperate with a residential placement had been placed earlier.
27. The timing of his residential placement allowed the student to develop the willingness and motivation to benefit to a very high degree from his placement.<sup>5</sup>

***Facts relating to the student's sensory processing and communication issues:***

28. At times relevant to this hearing, the student's learning disability of written expression had resolved to "dysgraphia" – a difficulty producing handwritten work. The student received occupational therapy services that improved his handwriting to the extent the student was able to produce properly formed and properly spaced handwritten letters.

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<sup>4</sup> The mother stated she felt it was important that the student visit the Gibault campus prior to finalizing the placement.

<sup>5</sup> Although the parents signified agreement to each of the Student's individualized education programs until February 2009 - when it became apparent that the student was soon to graduate - they argue that the school should have placed the student in a residential placement earlier. If that had occurred, it is likely that the student, now 18 ½ years old, would, by this point, have completed his high school education and no longer be entitled to educational services.

29. Respondents made several accommodations for the student's dysgraphia on his IEPs.<sup>6</sup> The student was also allowed to do written work on an "Alpha-Smart," an assistive technology device, and later, on a computer.
30. The student's handwriting has not been an impediment to completing various life skill and social skills worksheets, nor to his writing legible "dissenting opinions" to his monthly progress reports. There was no evidence that his handwriting was of any concern to his educational experience at Gibault.
31. The student has very acute hearing and is stressed by noisy environments. The student is able to decide whether he needs to wear noise-dampening headphones or listen to music to override more stressful noise. Auditory re-training, i.e., desensitization to noise, has not been necessary for the student to benefit from his individualized education program.
32. The student received services from Respondents' occupational therapist that helped the student develop techniques to manage sensory input and reduce stress. Although his preferred method of stress reduction is accessing his electronic devices such as his laptop, MP3 player, and video games, the OT services he has received also taught him a variety of calming strategies which he uses independently. These calming strategies include bouncing on an exercise ball, chewing on "chew toys," and laying under a weighted blanket.
33. The student experiences stress when there is unusual noise or commotion in his dorm at Gibault. He prefers to avoid such stressful situations by going to his room, exercising or taking a walk. The student is unable to use these latter strategies independently at this time because he must get Gibault staff permission to go to his room, and staff must accompany him if he leaves the dorm to go to the gym or take a walk.
34. Respondents gave the student a Test for Pragmatic Language in May of 2008 to determine if there was a need for pragmatic language services at Gibault. The student had no errors on that test, and the student evidences appropriate pragmatic language skills.
35. The student participates in class and group discussion without difficulty, and expresses himself eloquently in his creative writing endeavors. He evidences appropriate conversations with target people in the community such as bank employees, opticians, rental agents. While he worked at the Gibault dining hall, he conversed appropriately with both kitchen workers and people in the food line.

***Facts relating to the student's social skills:***

36. The student is assigned one-on-one staff at Gibault who accompanied him at all times, other than therapy. Staff wrote detailed daily reports of the student's activities, behavior,

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<sup>6</sup> A complete listing of his general education considerations, i.e., accommodations and modifications, are set out in the Appendix A.

and conversations.<sup>7</sup> The following findings are based on this hearing officer's exhaustive review of these reports.<sup>8</sup>

37. The student is well-mannered and polite. He can and does explain appropriate social behavior to other students who are not behaving appropriately. Staff has noted he is a "model resident."
38. The student converses appropriately with staff, peers, and teachers on a wide variety of topics.
39. The student can and does make spontaneous gestures of generosity and thoughtfulness toward other students, teachers, and staff.
40. The student can and does engage in, and tolerate, appropriate joking, horseplay, and pranks.
41. The student offers to help his peers in academic and social situations.
42. Although he generally prefers to be alone, the student participates in, and enjoys games, music, and recreational activities with others, and he evidences good sportsmanship in these situations.
43. The student can and does participate appropriately in campus and community activities, though at times, states he would rather be doing something else.
44. The student has read his personal poetry and has participated in musical performances at campus-wide functions without any significant anxiety or other difficulties.
45. The student's behavior is appropriate an overwhelming majority of the time.<sup>9</sup> On occasions when staff feels that the student needs to re-evaluate his behavior or decisions, for example, getting upset or not wanting to go to school or work, staff is usually able to persuade the student to make appropriate choices.
46. On those rare occasions when the Student has an angry outburst, one of the following is almost always the precipitating event:

Stressful interaction with his family

Malfunctioning or unavailability of the student's electronic devices

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<sup>7</sup> Gibault staff reports the student's activities in minute detail, including information such as whether the student eats his vegetables. (He does.)

<sup>8</sup> This hearing officer reviewed nearly one year of the student's daily morning and evening logs.

<sup>9</sup> After the student experienced a tumultuous home visit, his teachers were asked to chart the following behaviors: *Incidents of physical aggression, verbal aggression, verbal outbursts, non-compliance, and "out of assigned area."* Charting began on May 5, 2009 and ended May 29, 2009. There were no incidents charted in any of the areas during the entire period.



Genuine physical discomfort or anxiety<sup>10</sup>  
Perceived mistreatment of another student by a peer

47. The student has insight into his neurological and emotional “differences.” He acknowledges his struggles with low energy and motivation and his tendency to exaggerate and over-react to physical symptoms. He has, however, demonstrated the ability to ask for help from his therapist, teachers, and staff when he has questions or is experiencing difficulties.
48. The case conference committee met in February 2009 and decided that one-on-one staff should begin “fading,” i.e., discontinuing their practice of following the student to school and work, to see if he could function appropriately without that support. The student did not experience any difficulties due to lessened supports.

***Facts relating to the student’s life skills:***

49. Prior to his residential placement, the student’s anxiety and mood disorder severely impacted his ability and willingness to develop life skills appropriate for a person his age beyond those mandated by the parents. The parties agreed that the student would need to develop certain life skills, but due to the student’s more pressing psychiatric issues, no reasonable plan could be developed or implemented.<sup>11</sup>
50. Gibault’s ABLE program provides systematic instruction geared at developing the social and life skills of its residents. At Gibault, the student was willing and able to participate in group activities geared to teach and practice a wide variety of life skills. There is ample evidence that the student has a good intellectual grasp on most life skills. He performs a wide variety of housekeeping tasks in a satisfactory fashion without complaint, or repetitious instruction, and with minimal prompting or from staff.<sup>12</sup> Campus staff reports he can sort, wash, and fold his clothes both at the dorm and at the laundromat. He can order restaurant meals and figure the server’s tip. He can explain to a hair stylist how he wants his hair cut. The student has demonstrated reasonable competence in planning a menu, shopping for the needed items, preparing the food, and completing the clean-up process. He does not impulsively purchase items from the dorm’s “success shelf,” but instead, defers purchases until he has enough money to get an item he really desires.
51. When the student worked in the dining hall, he followed directions, stayed on-task and volunteered for extra assignments when his work is finished. He interacted appropriately

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<sup>10</sup> The student frequently voices somatic complaints, usually to avoid something he does not want to do. Staff has usually been able to persuade the student to follow through with his scheduled activities if he is not experiencing significant malaise.

<sup>11</sup> It would make little sense for a case conference committee to set goals for social skills and “travel training” for a student who, on most occasions, is too anxious to leave his bedroom.

<sup>12</sup> It was often noted in the student’s daily log that the student prompted the *staff* to spray the bathrooms so he could complete his bathroom chores.

with kitchen staff and diners. The only concern expressed by kitchen staff was the student's failure to show up for work on a consistent basis.

52. The Student does not evidence significant anxiety during community outings, even if he is bored or impatient. He does, however, have anxiety about riding the bus. Much of his anxiety centers on his fear of missing his bus stop. The student's low tolerance to noise adds to the Student's stress and anxiety. Although he has not been enthusiastic about "travel training" with Gibault staff, he has cooperated with the process. The case conference committee agreed that it was not realistic to expect the student master independent transportation skills by May 2009.<sup>13</sup>

***Facts relating to the student's academic progress:***

53. The student has superior intelligence and the parties have always anticipated that the Student would receive a "Core 40" college prep high school diploma. The student has always received instruction geared toward a high school diploma. The student did not need modifications to his academic materials. The content of his academic instruction and performance criteria has been accordance with Indiana standards.
54. Prior to entering Gibault, the student had accumulated 22 credits toward graduation. Thirteen of those credits were earned while on full or partial homebound programs.
55. The student passed both portions of the State's I-STEP tests with above average scores prior to placement at Gibault
56. Gibault's ABLE program for students with autism spectrum disorders has a self-contained classroom. Gibault also operates Holy Cross High School, a private high school accredited by the State of Indiana.
57. The student did not need the structure of the self-contained classroom and adjusted without delay or difficulty to academic instruction at Holy Cross.
58. Holy Cross offers academic instruction in a traditional classroom format. Holy Cross also offers academic instruction through a "credit recovery program" which is a self-paced, computer instruction based on the Indiana standards for the particular course. The student received above-average grades in both types of instruction.
59. The student attended classes daily and earned 5.5 credits in Gibault's traditional program and fourteen (14) credits from Gibault through its credit recovery program.
60. The student's instructor watched the Student progress through the computer-based programs. There is no credible evidence to support the mother's suggestions that student "gamed" the computer instruction program and did not master the material.

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<sup>13</sup> Other forms of public transportation, such as a taxi, or a specially routed bus, may need to be considered in order to increase the student's community mobility in the short term. It is likely that the student will need to perceive a significant benefit, such as access to WI-Fi, to motivate him to deal with more public forms of transportation.

61. The combination of traditional classroom instruction and self-paced computer instruction gave the Student the benefits of experiencing peer and teacher interaction, while allowing him to make up credits he was unable to earn prior to entering Gibault.<sup>14</sup>
62. While at Gibault, the student studied for and passed his SAT tests with above-average scores. Staff reports indicate he completed the testing process without significant anxiety or other difficulties.
63. The student applied to, and was accepted by, the University of Vincennes, pending graduation.
64. The student completed sufficient credits for graduation and Gibault issued him a high school diploma on or about May 19, 2009.
65. The Indiana Department of Education gives accredited schools the authority to grant credits, accept or deny transfer credits, and review past work of a student to establish whether that student should be awarded credit by virtue of his meeting the school's criteria of mastery for a subject. The granting of credits is at the discretion of the high school. The IDOE does not grant or deny students credits toward graduation.

***Facts relating to transition planning:***

66. The parties have always been in agreement with the following statement that has been in the student's Transition portion of each of his relevant IEPs: ***"It is anticipated that the student will need ongoing adult services after graduation or exiting the secondary education program."***
67. At, and prior to the student's case conference committee meeting in November 2007, the parties agreed that the student would be transitioning to post-secondary education rather than employment.
68. At the student's case conference committee meeting in November 2007, the parties agreed that a post-graduation outcome of technical or trade school (with support) was more appropriate for the student than that of attending a college or university (with support).
69. At, and prior to, the student's case conference committee meeting in November 2007, the parties agreed that the student would need a long-term semi-independent residential placement after graduation.
70. At, and prior to, the student's case conference committee meeting in November 2007, the parties agreed that the student would require limited support for recreation and leisure after graduation.

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<sup>14</sup> Although the student's mother seemed shocked in February 2009 that the student had completed all but two of the credits needed for graduation, the student's therapist at Gibault informed mother in August of 2008 that she believed that it would be possible for the student to complete his high school work by the summer of 2009 and to start college in the fall of 2009.

71. A representative from Vocational Rehabilitation made an informational presentation at the student's case conference committee meeting in November 2007. The IEP of that date indicates that the parents were presented materials relating to adult services on May 3, 2005.
72. Prior to placement at Gibault, the student's anxiety and mood dysregulation was so intense, that the student's case conference committee was, by necessity, focused on academics – the area in which the student was the most functional. Detailed planning of transitional activities for the student was not feasible at that time.
73. Transition planning is an integral part of Gibault's ABLE program. In addition to Gibault's comprehensive life and social skills training, the student's IEP at Gibault and the student's monthly progress reports provided sufficient guidance to keep the parties focused on activities the student would need in his transition to adult services.
74. Each of the student's monthly progress reports at Gibault stated an anticipated discharge date of June 2009.
75. Gibault provides a year of Aftercare services at no charge to the family. At admission, the student was assigned a specific Aftercare staff person who met with the student at least monthly to help determine what services the student was likely to need upon discharge. It is also the function of the Aftercare worker to assist the student in connecting with sources to meet those needs upon discharge.
76. The student and parent attended the case conference committee on February 20, 2009 which set goals to transition the student to adult services. The student has attained the following listed post-secondary goals: ***"earn[ed] credits toward graduation, complete[d] vocational assessment<sup>15</sup>, identif[ied] preferred colleges,<sup>16</sup> contact[ed] college of choice."***<sup>17</sup>
77. In February 2009, the student's case conference committee addressed the student's transition to on-going adult services. The student has attained the following listed transitional goals: ***"appl[ied] to and complete[d] intake process for Vocational Rehabilitation, and participate[d] in community based instruction for banking."***<sup>18</sup>
78. In February 2009, the student's case conference committee set the follow independent living goals: ***"[Student] will demonstrate functional and employment related math skills."*** These goals are vague. The student's monthly reports indicated that the student

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<sup>15</sup> A vocational assessment was completed at Children's Resource Group, the parents' preferred provider.

<sup>16</sup> The student has expressed interest in the University of Vincennes and IVY Tech.

<sup>17</sup> The student has been accepted at the University of Vincennes, pending graduation.

<sup>18</sup> The student's log reflects a community outing to a bank during which the student questioned bank personnel about checking accounts. Gibault staff testimony confirms the student has met his banking goals.

participated in a number of programs relating to money and spending in October and November 2008, “Parts of a check” and check writing in January 2009 and “Menu Math” in January, February, and March 2009, “Guest Check Receipts” and bus fares in March 2009. The student completed time cards and was paid for his work in the kitchen. The student has always successfully participated in Gibault’s life skills groups. His I-STEP and SAT math scores are above average. Whatever the term “employment-related math” means, the student is likely to learn whatever he still needs to know very quickly.

79. There is no credible evidence that there were any flaws in the Transition portions of the student’s individualized education programs that have left the student unprepared for transition to the adult support services anticipated by the parties.
80. Vocational Rehabilitation services include a vocational coach who could support the student in applying his math skills to an employment situation.
81. The February 2009, the student’s case conference committee set the following employment goal: ***“Upon completion of high school, [Student] will participate in job development services from a community rehabilitation program to obtain competitive employment.”*** The representative from Vocational Rehabilitation stated that they (Voc. Rehab.) were ready to set up a program of trial work experience(s) for the student. This goal cannot, however, be met without the cooperation of the student and parents.
82. The February 2009 case conference committee set the following independent living goal: ***“Upon completion of high school, the student will live in an apartment/house with supports.”*** A representative from the Bureau of Developmental Disability Services (BDDS) testified that BDDS is prepared to assist the student in applying to the State for a group home placement, and if denied, for alternative housing. This goal cannot be met without the cooperation of the student and his parents, ***nor can the student receive any other State housing assistance while the student remains in an IDOE-funded residential placement.***
83. The February 2009 case conference committee set the follow independent living goal: ***“[Student] will complete necessary paperwork for a State ID and transit card. The student’s daily log indicates that the student did, at one time, have a transit card.”*** There is no information whether or not the student has received a State ID card. The student has the Internet skills to go on-line to locate an appropriate Indiana Bureau of Motor Vehicles (BMV) office and print out a list of the documents that he will need to bring to the BMV. It is likely that the need support from his parents to gather together appropriate documents and someone to arrange for transportation.
84. The February 2009 case conference committee agreed to test the student’s readiness to transition to adult services by fading the student’s one-on-one aide. The aide ceased following the student to work and school. The student was able to adjust to the increased independence without anxiety or other difficulty.
85. The February 2009 case conference committee set the following independent living goal: ***“[Student] will attend all case conference committee meetings involving transition.”***

Gibault and the LEA held another case conference committee meeting for transition planning on April 21, 2009. The parents and student elected not to attend. The case conference committee continued its progress towards assisting the student's transition to adult services.<sup>19</sup>

86. The student applied for Vocational Rehabilitation Services with Indiana Family and Social Service Administration on March 9, 2009 and a case was opened for the student on March 30, 2009. The parents requested that Children's Resource Group perform the vocational evaluation. It is Voc Rehab's staff's stated intention to assign the student a vocational evaluator and to set up a Trial Work Experience for a community-based work evaluation that could last up to 18 months. Voc Rehab can also provide support for college if they believe the applicant will be employable after further education. Vocational Rehabilitation Services cannot fund services that an applicant is receiving under an individualized education program.
87. The student has applied to the Bureau of Developmental Disabilities Services in February 2008 for Medicaid waivers in the areas of autism, developmental disabilities and community-based support services. He has been approved for all three waivers. The student is eligible for unlimited services which include employment assistance, residential habilitation physical, occupational, speech and psychological therapies if the student is not approved for group home placement by some other State agency. The State typically processes applications for group home placement in about two weeks, but the student must have exited his residential placement through IDOE before a group home placement can be considered by the State.

***Facts relating to current student needs and appropriate services:***

88. Student is very proud of his academic achievement and is excited about attending college. He is aware that he will have new challenges. He has been accepted by the University of Vincennes, pending high school graduation. To require him to "re-take" high school classes would likely be devastating to his fragile self-confidence and self-esteem.<sup>20</sup> He does, however, need more structure and a lower noise level than he is apt to find in a typical college dormitory setting.
89. The student has been very successful with computer educational programming and is very comfortable communicating with others via the Internet. An on-line college program would be an appropriate college experience for him at this time.
90. The University of Vincennes offers a six-week program to assess college readiness. That type program, not the speculation of staff, parents, teachers and others involved with the

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<sup>19</sup> This hearing officer will not rule on the adequacy of a transition document when the student and parents have refused to attend the transition meeting or provide input for that document.

<sup>20</sup> The student's responses to the Casey Life Skills Assessment strongly suggests that this young man views himself as far less competent than his actual performance indicates.

student, is the appropriate means to gauge what, if any, post-graduation services and support the student needs for a successful college experience.

91. Vocational Rehabilitation is able to assist clients in receiving further educational services if such education can lead to employability of the client.
92. The student, by nature, tends to be rather passive. Although he has a good intellectual understanding of what he needs to do to be a responsible adult, he lacks motivation to engage in social and life skills activity on a sustained basis without initial prompting from staff.<sup>21</sup> It is likely that the Student will always need a network of support people to encourage him and reason with him to practice adult life skills.
93. The student continues to need medical management for his Anxiety Disorder, Bi-Polar Disorder and Attention Deficit Hyperactivity Disorder. Although he can independently access strategies to manage stress, the student admits he slips back into “bad habits” when he is at home with his parents. He continues to need psychotherapy to address anger management issues and improve his relationship with his family.
94. The student is exceptionally competent with technological devices such as computers, electronic games, and media devices. These devices meet the student’s perceived need for intellectual stimulation, creative expression, social interaction, entertainment, relaxation, and stress reduction. The ability of these technological devices to meet the student’s perceived needs lessens the student’s motivation to get these needs met in a more socially conventional fashion. This dynamic is a function of the Student’s pervasive developmental delay, a disorder on the Autism Spectrum
95. Since early childhood, access to electronic devices, or the funds to buy them, has been the main parental leverage for obtaining the student’s cooperation and appropriate behavior. Technology has also been a major parental balm for the student’s emotional upset.<sup>22</sup> Earning access to the Internet has been a major factor in motivating the student to engage in social behavior with other students at Gibault.
96. The student still struggles with low energy and lack of consistent motivation. The staff at Gibault has tried to assist the student in making responsible decisions to attend school and kitchen work whenever reasonable to do so. Although the student was usually convinced to attend work and school, it was the threatened loss of access to his computer and/or internet privileges that remained his bottom line motivator. It is likely that consistent work attendance will remain optional to the student until he is charged with the responsibility of paying for his all own computer, Internet access, and electronic entertainment.

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<sup>21</sup> The student rarely needs more than one prompt to do what he needs to do. Most of his “hygiene” prompts involve staff letting the student know that a shower is empty.

<sup>22</sup> The student’s daily reports indicate that the student frequently brought new technology back to campus after home visits. While he enjoys explaining the new technology or games to other students, if given a choice, he is far more likely to go to his room and play with the new device than to socialize with staff and peers.

97. The student is significantly more advanced academically and behaviorally than most other students at Gibault. He has a gift for self-expression in music and poetry<sup>23</sup> that he has shared with the Gibault community on several occasions. While he has benefitted from learning to cope with a wide variety of peer behavior at Gibault, the student does not feel he has a great deal in common with most other students, and he frequently finds their behavior to be childish and annoying. If the student is to progress in the development of his social skills he will need peers who share more similar academic, social, and recreational abilities and interests.
98. The student needs to begin receiving support in practicing vocational and life skills in a more adult milieu that is relevant to his individual interests and goals. The Indiana Bureau of Developmental Disability Services and Indiana Vocational Rehabilitation Services are the appropriate type of agencies to provide support and training for a person of the intelligence, insight, and communication and social skills that the Student has demonstrated at Gibault.
99. The student's log indicates that the student adjusted very quickly to the routine and expectations of Gibault. The student evidenced very little difficulty when changes occurred to campus routines.<sup>24</sup> The only type of change that provoked any significant reaction from the student was change that resulted in the unavailability of some technologically related experience that he was expecting. There is no reason to expect that transition to appropriate adult services will cause any significant problems for the student.

### **Conclusions of Law**

*To the extent that any material included in a Conclusion of Law necessitates a finding of fact, that additional finding of fact shall be made.*

1. Petitioners filed the petition for this due process hearing.

**Petitioners have the burden of proving that Respondents have not provided the Student with a free appropriate public education.**

2. The parties always reached agreement regarding services and placement for the student until it became apparent that the student would be graduating sooner than any of the parties expected. The homebound and partial homebound placements prior to March 2007 were driven by parental decisions regarding the medical management of the student's psychiatric conditions. Respondents provided all services requested and practicable during this time.

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<sup>23</sup> The Student's English teacher shared one of his poems during her testimony. The poem evidenced the student's struggle to follow his own path in the face of significant pressure to make others happy. This poem may be referenced in Appendix B

<sup>24</sup> There were occasional disruptions to the school and dorm routine due to weather, troubles with the dorm mechanical systems, teacher illness, and peer outbursts. The student coped with these circumstances, and even a surprise dental appointment, without upset.



**A two-year statute of limitations is appropriate in this case, and this hearing officer will not consider the student's educational programming prior to March 2007.**

3. Auditory re-training, i.e., desensitization to noise, is a medical, not educational service. The student's individualized education program included accommodations for his sensitivity to noise that allowed him to receive educational benefit.

Respondent's occupational therapy services have assisted the student in learning strategies to prevent sensory overload and manage anxiety and stress. The student evidences the ability to use these strategies spontaneously in most situations<sup>25</sup> and has been able to manage his emotions to the point where they no longer significantly hamper his educational process. At this point, the student's continued need to address anxiety, depression, anger management, and family issues are medical and psycho-therapeutic, not educational, concerns.

The student evidences good social and communication skills in a variety of environments. His communication and social skills have improved, not hindered, his ability to benefit from his academic instruction and behavioral therapy. The fact that the student generally prefers interacting with technology over interaction with people does not negate his accomplishments in interpersonal areas.

**Respondents have provided the student with a free appropriate education in the areas of social skills, communication, and sensory processing.**

4. The student's Transition Plans have recognized that the student would be aiming for a Core 40 diploma with the goal of post-secondary education **with support**. Toward that goal, the student has passed his I-STEP tests, been awarded a high school diploma, has been accepted by a college of his choice. The facts indicate that he is ready for either an on-line college experience or a modified traditional college experience with support. Adult services are available to provide that support once the student has graduated.<sup>26</sup>

The Student has completed academic work that has qualified him to receive a "Core 40" college preparatory high school diploma. Holy Cross has the authority under Indiana law to grant him his high school diploma and has done so. This hearing officer does not have the authority to invalidate a student's diploma.

511 IAC 7-33-2 provides that a student's right to a free appropriate public education ends at the conclusion of the school year in which the student becomes twenty-two (22) years of age unless a student graduates with a high school diploma. The Code of Federal Regulations, 34 CFR 300.102(a) states:

The obligation to make FAPE available to all children with disabilities does not apply with respect to the following...Children

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<sup>25</sup> The student admits that it is difficult to use calming strategies in family situations which tend to draw him back into "bad habits."

<sup>26</sup> But for the parents desire to invalidate the student's diploma via this hearing process, the student would currently be eligible to receive adult educational support services.

with disabilities who have graduated from high school with a regular high school diploma.

The Student has received a Core 40 diploma, which requires work beyond that needed to for a regular high school diploma. Respondents have provided academic educational services more than sufficient to prepare the student for post-secondary education or vocational training with adult support services that he will be entitled to receive upon graduation or exit from his placement by the Indiana Department of Education.

**Respondents have provided the student with a free appropriate academic education. Respondents have no further obligation to provide academic educational services to the student.**

5. While the student can be taught, and has learned, skills to make him more social and functional in a conventional sense, the student cannot be “educated off” the Autism Spectrum. Neither can Respondents “educate away” his psychiatric conditions and sensory hypersensitivities. The student’s Transition Plans have always recognized the likelihood that the student will need educational, medical, social, and vocational support services after graduation. While the student was on homebound instruction due to his severe anxiety and mood issues, there was very little specific transition planning that could reasonably have been implemented for the student regarding medical, social, and vocational support services after graduation. Once the student was placed at Gibault and found to be able to cooperate with the life and social skills programs available there, the student immediately began activities that assessed and developed these skills geared toward preparing him for semi-independent living with adult support,

IDEIA and Article Seven do not require schools to provide educational services to handicapped children until they are totally prepared and motivated to face independent adult life. If it did, there would be no reason for setting the far end of educational entitlement at age twenty-two. The parties have always agreed that the student would likely continue to need adult support in all areas, to one degree or another. Respondents cannot be faulted for not educating the student to a level of independence the parties did not believe to be reasonable in the first place.

Respondents have provided sufficient social and life skills training, and the student has demonstrated sufficient competence in social and life skill areas to allow him to transition to adult-level support services.

**Respondents have provided the student with appropriate non-academic services and education. Respondents have no further obligation to provide non-academic educational services to the student.**

6. In December 2007, after medication changes failed to produce significant improvement in the student’s anxiety and mood dysregulation, the student’s doctor wrote a recommendation for residential placement. Prior to the case conference committee in January 2008, the facts indicate that the parents, their physicians, the school, and the student himself had reservations

regarding the appropriate educational situation for a student with the degree of anxiety and mood dysregulation evidenced by the student.

**Prior to placement at Gibault, the student received educational services geared to provide him with the educational benefit appropriate under the limitation of the student's psychiatric issues and parental decisions thereon .**

7. The case conference committee considered the recommendations of the student's doctors in January 2008. There is no convincing evidence that Respondents disputed the student's need for a residential placement or delayed investigating an appropriate facility for the student after the student's parents and doctors decided to discontinue further pharmaceutical attempts to improve the student's functioning.

After the January 31, 2009 case conference committee meeting, the parties affected an orderly process of implementing a residential placement for the student. While certain educational services can, and should, be implemented immediately, it is absurd to expect a local educational agency to effect a residential placement on the same timetable as arranging for homebound instruction. A residential placement requires the participation of parties other than the parents and school, and those parties must take steps to ascertain whether a particular agency is appropriate and acceptable to all involved. In this case, the mother testified that it was imperative that the student be "on board" with the decision to leave the family home, and furthermore, that he feel safe in the particular facility considered. This process, which the mother stated took a year, began with the parents' private evaluations of the student in May 2007 and ended in May 2008 when the parents, Gibault, and student decided that the placement was a "good fit." There was no evidence that Respondents took any more time than necessary to make sure the student received the most appropriate placement and services that could be arranged for the student.

The time an LEA spends in preparing a well-thought out application to the Indiana Department of Education goes beyond mere funding considerations. IDOE serves as a check on whether a student is receiving an appropriate education in the least restrictive environment. There is no convincing evidence that Respondents took an unreasonable amount of time to prepare and submit the student's application to IDOE. Neither is there any convincing evidence that Respondents took an unreasonable amount of time to prepare an IEP appropriate for implementation at Gibault.

**Respondents did not delay in arranging residential services for the student and the student is not entitled to any compensatory education for not being placed in a residential facility at an earlier date.<sup>27</sup>**

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<sup>27</sup> It should be noted, however, that this hearing officer's decision to maintain the Gibault placement as a stay-put placement after Respondents presented prima facie evidence of graduation, has, in effect, allowed the student to receive services in excess of what this hearing officer believes Respondents are legally required to provide.

## **Orders**

Based on the above findings of fact and conclusions of law, no specific orders are deemed necessary.

***The parties are ordered to implement the provisions of this decision within thirty (30) calendar days from the date this decision is received unless, during that same time period, an appeal to the Special Education Board of Appeals is filed.***

Nothing in this decision should be construed so as to prevent the parties from modifying the effect of this decision by their agreement.

## **Appendix A**

### **Adaptations, Modifications and Personnel Supports Offered the Student**

(Any underlining appeared in original document)

IEP dated November 16, 2006

1. Use of calculator
2. All classroom tests taken with homebound teacher. Monday morning tests may be moved at teacher's discretion
3. Frequent breaks to reduce anxiety with the classroom such as quietly reading a book or listening to headphones to allow him to disengage mentally and sensory [sic].
4. Extended time (one week) for completing assignments
5. Use of headset/mp3 player, chewing gum, free reading and/or figit [sic] items in the classroom during instruction to reduce anxiety and in hallway
6. Verbal prompts to start work<sup>4</sup>
7. Provide topics for written work to address disability in written expression
8. Scribing offered for all written output assignments and tests – student choice
9. Reduce the amount and length of assignments and written work to what is needed to reflect mastery, as the curriculum allows
10. Modify topic selection to an area of interest if curriculum allows
11. Break writing tasks into smaller steps
12. Assignments / notes/ handouts provided by teacher
13. Assignments modified to reduce need for written output, as curriculum allows. If possible, use multiple choice, oral response and fill-in
14. For projects, deadline may be extended at homebound teacher's discretion
15. Use of computer or alternative for drawing and writing assignments
16. [Student] should not be asked to read aloud. He should only be called upon for answers in class if he volunteers.
17. In group assignment, [student] should not be responsible for written output or art
18. Monitor [student's] behavior in the classroom/social situations for signs of increased anxiety (stiffening of body, inattentive stare, nodding of head, non-topical comments)
19. [Student] does not tolerate being touched or having attention drawn to him.

20. [Student] will have a permanent pass for use in the hallways. Allow him to use it to go to the library, when available and open, to sit if he is feeling stressed.
  21. Teacher will remind [student] to check agenda sheet daily
  22. There will be no disciplinary action taken if [student] is late to class. Also, do not call attention to him if he is late.
  23. When class is having food, [student] will be sent to the library
  24. Gen. Ed. teachers need to notify (if possible) [student] of changes in classroom schedule, seating arrangement, or routine.
  25. Preferential Seating away from distractions
  26. For testing, 1:1 homebound, extended time (time and a half), if test allows, parts read orally, calculator, scribe.
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IEPs dated November 13, 2007 and March 5, 2008

1. Allow [student] to quietly read a book or listen to headphones to disengage mentally and sensory [sic]
2. Extended time (one week) for completing assignments
3. Use of headset/mp3 player, chewing gum, free reading and/or fidget [sic] items in the classroom during instruction to reduce anxiety and in hallway
4. Provide alternative topics for written work to address disability in written expression
5. Scribe offered for all written output assignments and tests
6. Reduce the amount and length of assignments and written work to what is needed to reflect mastery, as the curriculum allows
7. Break writing tasks into smaller steps
8. Assignments / notes/ handouts provided by teacher
9. Assignments modified to reduce need for written output, as the curriculum allows. If possible, use multiple choice, oral response and fill-in
10. For projects, deadline may be extended at homebound teacher's discretion
11. Use of computer or alternative for drawing and writing assignments
12. [Student] should not be asked to read aloud. He should only be called upon for answers in class if he volunteers.
13. In group assignment, [student] should not be responsible for written output or art
14. Monitor [student's] behavior in the classroom/social situations for signs of increased anxiety (stiffening of body, inattentive stare, nodding of head, non-topical comments)
15. [Student] does not tolerate being touched or having attention drawn to him.
16. There will be no disciplinary action taken if [student] is late to class. Also, do not call attention to him if he is late.
17. General education teachers need to notify (if possible) [student] of changes in classroom schedule, seating arrangement, or routine.
18. Preferential seating away from distractions
19. Testing - 1:1 homebound, extended time (time and a half), if test allows, parts read orally, calculator, scribe.

## Appendix B

### Poem written by student<sup>28</sup>

#### Who You Are

Time for all to look, look into your own self.  
Time for all to look, look into your reflection.  
Do you like what you see or does it not match?  
Are you one influenced by others or are you your own person?  
Do you let other dictate your actions or do you carve your own path?

Time to look in a new place, my friends, into the past.  
Look hard and long, think about what you see.  
Does your path reflect who you want to be or does it reflect what they want you to be?  
Time to think now, think about who you want to be.

More thinking for you now, of the future this time.  
Whip out that crystal ball now and see.  
See where this path of yours is leading.  
See if it's your path or one carved for you.  
Is it one you would like for you to go or one that they'd love for your to go?

Consider this now and heed my words.  
This life is yours to live, not theirs.  
These are your choices to make, not theirs.  
So heed not those who want to make you what you're not.  
Instead, I encourage you to just be who you are.

#### **APPEAL TO THE BOARD OF SPECIAL EDUCATION APPEALS**

The Student requested a thirty day extension of time to file his Petition for Review on July 29, 2009. The School objected to the Student's request for additional time to file his Petition for Review on July 30, 2009. The Indiana Board of Special Education Appeals ("BSEA") granted the Student's request for additional time and the Student timely filed his Petition for Review on September 8, 2009. The School's response to the Petition for Review was received on September 18, 2009.

The School filed a Motion for Order Ending the Stay Put Placement and Brief in Support if the Motion on July 30, 2009. The Student filed a letter on August 3, 2009 objecting to the School requested an order to end the Stay Put Placement. The BSEA denied the School's motion for an order to end the Stay Put Placement on August 5, 2009.

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<sup>28</sup> Layout and punctuation of the poem has been "guesstimated" by the hearing officer.

On September 10, 2009, the Office Manager for the Office of Legal Affairs at the IDOE contacted the parties to obtain available dates should the BSEA elect to hold oral argument. The parties were asked to indicate how they wished to receive the final written decision of the BSEA. The parties responded timely and provided available dates.

On September 21, 2009, the BSEA notified the parties that it would conduct its review without oral argument and without the presence of the parties on October 2, 2009 in the offices of the IDOE at 151 West Ohio Street, Indianapolis, Indiana. On October 2, 2009, the BSEA conducted its review. All three members of the BSEA were present.

### *Student's Petition for Review*

The Student raises the following twelve issues in his Petition for Review:

- 1) Whether the two-year statute of limitations was tolled by the School's actions, including its failure to timely and appropriately evaluate the Student for autism, coupled with its failure to inform the Student's parents that an evaluation had not been conducted;
- 2) Whether the School denied free appropriate public education ("FAPE") for the Student because it did not provide the Student with an evaluation to determine eligibility for autism spectrum disorder until 2008, and because the School failed to provide service to the Student to address his autism prior to 2008;
- 3) Whether the IHO incorrectly excluded testimony and evidence of statements from a school employee to Dr. Graves, which were statements by a party opponent, and not hearsay;
- 4) Whether the School denied FAPE for the Student because it did not provide the Student with an education in the Least Restrictive Environment ("LRE") from 2005 through 2008;
- 5) Whether the School denied the Student a FAPE because it did not provide the Student with an appropriately-trained homebound instructor;
- 6) Whether the School denied the Student a FAPE because it did not provide the Student with a transition plan;
- 7) Whether the Student was illegally and/or improperly granted a high school diploma by relying upon on-line course credits granted despite the absence of a "non-traditional credit waiver," and despite the minimal amount of time expended by the Student in earning those credits;
- 8) Whether the Student was denied FAPE by the School's decision to renege on promises that the Student had until the age of 22 to complete his education, and graduation would not be based solely on credits-promises upon which the parents and other members of the committee relied-when they agreed to the placement of the Student at the Gibault facility and use of its credit recovery program;

9) Whether the IHO erred in concluding that Article 7 of the Indiana Administrative Code (“IAC”) and the Individuals with Disabilities in Education Act (“IDEA”) limit responsibilities of the School to purely academic goals, accommodations, and/or services, and thus decided the School did not have responsibility for providing life and social skills or transition services for students such as the Student;

10) Whether the School denied the Student FAPE because it did not provide the Student with goals, services or objectives in life skills, social skills or other functional training in order to prepare him for college and/or employment after graduation;

11) Whether the IHO erred in ignoring testimony from the Student’s placement facility (Gibault) and from his doctors and medical care providers warning that the Student was not prepared for graduation, such that transition into the post-secondary environment might be hazardous to the Student’s health;

12) Whether the IHO erred in admitting Evansville-Vanderburgh-Posey County Special Education Cooperative and the Evansville-Vanderburgh School Corporation’s (“School”) exhibits and witness list, which were not mailed to Petitioner’s counsel until the day they were due, and which arrived after the exchange deadline.

13) The Student listed several Findings of Fact and Conclusions of Law that he objected to and disputed in the Conclusion section of his Petition for Review. The Student did not specifically identify the reason for his objection to these findings or conclusions. The findings and conclusions objected to in the Conclusion section of the Student’s petition are as follows:

- a) Findings of Fact numbers 5-11; 14; 25-28; 49; 60-61; 65; 71-73; 76-85; 88-90; and 99.
- b) Conclusions of Law numbers: 2-7

#### *School’s Response to Student’s Petition*

The School addresses what it refers to as the seven issues raised by the Student in his Petition for Review:

1) The School provided the Student with a FAPE. The School alleges that the Student fails to cite to evidence to support its allegations that FAPE was not provided to the Student. The School further offers that the School performed a psychological evaluation on the Student on March 11, 2004 where Asperger’s was not considered to be the cause of the Student’s behavior. In October 2005, the mother of the Student refused to have the Student tested for autism, PDD, Asperger’s, or traumatic brain injury. The School consistently reported on the Student’s IEPs that his medical diagnoses included PDD, NOS and OT services were provided along with BT services as well as other general education accommodations to address the Student’s needs.

The School also contends that the two year statute of limitations should apply, as the IHO found, limiting the scope of matters considered in this case to up to two years before the date the parent knew or should have known about the alleged action that formed the basis of the due process hearing.



Also the School points out that the School held several case conferences from September 2006 through April 2008 which lasted about an hour and the Student's mother had ample opportunity to give input and ask questions. The Student's mother also had an advocate with her at the case conferences. According to the testimony of the Student's mother at the hearing, she had with or consented to the recommendations contained in the IEPs until February 2009. The School argues that the Student's mother filed the due process action only after the School denied her request to not allow the Student to graduate from high school.

2) The homebound teacher was appropriately trained and the Student was provided with FAPE. The School contends that the Student received FAPE and the homebound teacher was not objected to by the Student's mother and in fact the mother complimented the teacher on her efforts with the Student and pointed out that the Student was productive when working one on one with the teacher. The School also points out that the homebound teacher followed the IEPs for the Student and thereby addressed the Student's needs.

3) The School provided the Student with a transition plan. The School asserts that the School provided a transition plan and multiple general education consideration for the Student with the ultimate goal of the Student attending a technical or trade school with support. The School also offers that every IEP in evidence indicates that the Student would need ongoing adult services after graduation. Before placement at Gibault, the Student's anxiety and mood deregulation required intense focus on academics. Following placement at Gibault, the daily reports from the Gibault staff reflect the incorporation of comprehensive life and social skills training into the Student's daily routine.

The School points out that the case conference on April 21, 2009 was scheduled to specifically discuss transition plans however, the parents elected not to attend.

4) The School fulfilled its obligations under IDEA. The School asserts that the Student was provided with academic services, behavior and life skills programs, vocational training, and social skills training and therefore the School's obligations under IDEA were satisfied.

5) The Student earned his high school diploma. The School offers the testimony at hearing from the principal Holy Cross who testified that the Student possesses academic skills and stated that he had no doubts that the Student earned his diploma and "mastered" the skills required by the state of Indiana.

6) The Student's graduation was not premature. The Student earned his diploma, achieved good ISTEP and SAT scores, has a good grade point average and was accepted into college. The School argues it met its obligations under state and federal law by providing the Student with FAPE.

7) The IHO properly admitted exhibits into evidence. The documents introduced as exhibits by the School were produced in March 2008 to the Student and his counsel. The Student's counsel had some of the documents in question in his own exhibit binder. The witnesses for the School were on the Student's exhibit list. No prejudice exists on this issue against the Student.

## **REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS**

On October 2, 2009, the BSEA convened in Indianapolis, Indiana for the purpose of conducting oral argument and its review in this matter. All three members appeared. Based upon the record as a whole, the requirements of state and federal law, the Petition for Review, and the Response thereto, the BSEA now decides as follows:

### **Combined Findings of Fact, Conclusions of Law and Orders:**

1. A Student may file a timely Petition of Review of the IHO decision in a Due Process Hearing with the BSEA. The Petition for Review must be specific as to the reasons for the exceptions to the IHO's decision, identifying those portions of the findings, conclusions, and orders to which exceptions are taken. *See* 511 IAC 7-45-9(d)(4).
2. The IHO decision must contain separately stated Findings of ultimate Fact, Conclusions of Law, and if applicable, Orders. The conclusions of law must be based upon the findings of fact and the orders must be derived from the conclusions of law. *See* Ind. Code 4-21.5-3-27(b).
3. In the conduct of review, the BSEA is to review the entire record to ensure due process hearing procedures were consistent with the requirements of 511 IAC 7-45-7. The BSEA will not disturb the Findings of Fact, Conclusions of Law, or Orders of an IHO except where the BSEA determines that a Finding of Fact, Conclusion of Law or Order made by the IHO is:
  - a. Arbitrary or capricious;
  - b. An abuse of discretion;
  - c. Contrary to law, contrary to a constitutional right, power, privilege or immunity;
  - d. In excess of the IHO's jurisdiction;
  - e. Reached in violation of established procedure; or
  - f. Unsupported by substantial evidence.(*See* 511 IAC 7-45-9(j)).
4. Following review of each of the twelve issues raised by the Student in his Petition for Review the Board finds as follows:
  - a. The two year statute of limitations does apply. The two-year statute of limitations was not tolled.
  - b. The Student was not denied a FAPE by not evaluating timely for autism spectrum disorder. The school evaluated the Student with a checklist that was identified as being similar to the test used to identify Autism. Further, the parents did not allow the School to test the Student for Autism;
  - c. The IHO did not err in excluding the testimony and evidence of statements from a school employee to Dr. Graves as hearsay;

- d. The Student was not denied a FAPE within the scope of the two statute of limitations time frame of 2007-2008. The School provided services to the Student and worked on placing the Student in the residential setting;
  - e. The Student was not denied a FAPE and the Student was provided with an appropriately trained homebound instructor;
  - f. The Student was not denied a FAPE because the School provided the Student with a transition plan;
  - g. The Student was not illegally or improperly granted a high school diploma. The Student earned sufficient credits to earn a high school diploma. The Student test scores indicate that the Student possesses the aptitude to earn the grades received;
  - h. The Student was not denied FAPE and the Student met the requirements to receive a diploma and graduate;
  - i. There is no evidence that the IHO found “that Article 7 of the Indiana Administrative Code (“IAC”) and the Individuals with Disabilities in Education Act (“IDEA”) limit responsibilities of the School to purely academic goals, accommodations, and/or services, and thus decided the School did not have responsibility for providing life and social skills or transition services for students such as the Student”;
  - j. In 2007 the record shows that the Student experienced issues that prevented life skills, social skills and other functional training. However, while at Gibault, training in life skills, social skills and transition services and other functional training were provided;
  - k. The IHO’s decision is supported by substantial evidence;
  - l. The IHO conducted the hearing in an appropriate manner and the Board finds no error.
5. The Student listed several Findings of Fact and Conclusions of Law that he objected to and disputed in the Conclusion section of his Petition for Review. In listing the Findings of Fact and Conclusions of Law the Student failed to specifically identify the reason for the Student’s objection to these findings or conclusions. The findings and conclusions objected to in the Conclusion section of the Student’s petition are as follows:
- 1. Findings of fact: 5-11; 14; 25-28; 49; 60-61; 65; 71-73; 76-85; 88-90; and 99.
  - 2. Conclusions of law: 2-7.

The Board finds no error in the findings and conclusions cited by the Student.

6. The Board finds a clerical error in the date cited in Finding of Fact #25:

In the IHO Findings of Fact #25 the date of April 2009 is cited however, the date should be April 2008.

7. The Board finds that the IHO's Orders were supported by substantial evidence.
8. The Board upholds the IHO's Orders as written.

### **ORDERS**

In consideration of the foregoing, the Board of Special Education Appeals rules as follows:

1. Except as indicated above, the IHO's Findings of Fact, Conclusions of Law and Orders are upheld in their entirety.
2. Any allegation of error in the Petition for Review not specifically addressed above is deemed denied.

DATE: October 8, 2009

/s/ Rolf Daniel  
Rolf Daniel, Ph.D., Chair  
Board of Special Education Appeals

### **APPEAL RIGHT**

Any party aggrieved by the decision of the Board of Special Education Appeals has the right to seek judicial review in a civil court with jurisdiction within thirty (30) calendar days from receipt of this written decision, as provided by I.C. 4-21.5-5-5 and 511 IAC 7-45-9(n).